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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 Marcus D. BRICENO,

11 Plaintiff,

12 v.

13 Blake WILLIAMS, et al.,

14 Defendants.
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Case No.: 16-cv-1665-JAH-AGS

**ORDER DENYING MOTION FOR
APPOINTED COUNSEL (ECF No. 40)**

16 For the third time, plaintiff Marcus Briceno seeks appointed counsel. The last two
17 times, he sought counsel because of medical issues that he alleged interfered with his ability
18 to litigate his case. This time, he argues that he is “unlearned” in “the matters of law” and
19 has limited access to the prison’s law library. (ECF No. 40, at 1.)

20 “Generally, a person has no right to counsel in civil actions,” *Palmer v. Valdez*, 560
21 F.3d 965, 970 (9th Cir. 2009), and, even under the statutory authority to recruit counsel in
22 civil cases, the Court cannot force attorneys to represent an indigent civil litigant. *See*
23 *Mallard v. U.S. Dist. Ct. for the S. Dist. of Iowa*, 490 U.S. 296, 310 (1989) (holding that
24 the relevant statute—28 U.S.C. § 1915— “does not authorize the federal courts to make
25 coercive appointments of counsel”). But “a court may under ‘exceptional circumstances’
26 appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1).” *Palmer*,
27 560 F.3d at 970 (citation omitted). “When determining whether exceptional circumstances
28 exist, a court must consider the likelihood of success on the merits as well as the ability of

1 the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues
2 involved.” *Id.* (citation and quotation marks omitted).

3 As this case is still in its substantive infancy—so far Briceno has successfully fended
4 off a motion to dismiss based on timeliness—it is unclear what his likelihood of success
5 on the merits may be. But, as already pointed out in both previous orders, Briceno’s
6 excessive force claim is, like most excessive force claims, not particularly complex. *See*
7 *Price v. Kamer*, 993 F. Supp. 1295, 1298 (C.D. Cal. 1997) (“With rare exceptions,
8 excessive force cases are simple, rather than complex cases. Excessive force cases almost
9 always involve very few events which happened over a very short time span. There tend to
10 be relatively few witnesses, and the dispositive disputes almost always involve the
11 credibility of witnesses.” (emphasis omitted)). The Court notes that Briceno has been
12 capable of articulating his legal position and conducting legal research; as previously
13 alluded to, he successfully overcame a motion to dismiss his complaint on the grounds of
14 timeliness. (*See* ECF No. 34.) His filings are well-researched and thoughtful, and so far
15 Briceno has been able to articulate his claims. The motion for appointment of counsel is
16 therefore denied.

17 Dated: January 28, 2019

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19 _____
20 Hon. Andrew G. Schopler
21 United States Magistrate Judge
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